TWO NEW SOUTHERN CONSTITUTIONS.

WITHIN the last two years two more steps have been taken in the counter-revolution which the Southern States are conducting against the Republican reconstruction measures of the sixties and early seventies. Alabama and Virginia have adopted new constitutional provisions for the exclusion of negroes from participation in politics. By these acts the number of states that have engaged in this policy has been raised to seven: Mississippi pointed the way in 1890, South Carolina followed the lead in 1895, Louisiana came in 1898, North Carolina in 1900, Maryland in 1901, and now Alabama and Virginia have joined their sister states. In one case only, North Carolina, has the change in the voting class been accomplished by a mere amendment of the existing constitution on the specific point concerned; in Maryland it was brought about by an act of the legislature, while in each of the other five states it has been an incident in a general and far-reaching revision of the constitution by a special convention. The proceedings of these conventions, therefore, reveal not only the reasons for Negro disfranchisement, but also the general trend of constitutional ideas in the respective states. It is aimed in the following sketch to give a summary view of the principal features of the new Alabama and Virginia constitutions.[1]

I.

The Alabama convention, under an act of December 11, 1900, met at Montgomery on May 21, 1901. It was composed of 155

[1] The principal sources for this paper are the files of newspapers in Montgomery and Richmond. The Alabama convention made an arrangement by means of which a verbatim report of its proceedings was published daily in the Montgomery *Advertiser;* and the Virginia convention entered into a similar agreement with the Richmond *Dispatch.*

[2] The convention was made up of four members from the state at large; two from each congressional district (9 districts); one from each state senatorial district (33); and one from each representative district (100). A prominent newspaper asserted that this elaborate organization was created to give young Democratic aspirants for office some political experience. (Montgomery *Advertiser,* July 7, 1901, p. 4.) Acts of Alabama, 1900–01, pp. 224–234.

delegates,[2] of whom 141 were recognized by the Democratic caucus as regular Democrats and fourteen were Republican or Populist opponents. The convention included two former governors of the state, two former chief justices of the state supreme court, one member of the constitutional convention of 1865, three members of the convention of 1875, the chairman of the Democratic state committee, a former president of the University of Alabama, four newspaper men, three physicians, six bankers, one schoolteacher, one civil engineer, one mechanic, ninety-six lawyers,[1] and a small minority of planters and merchants. Of those who were old enough for military service at the time of the Civil War, almost every one had served in the Confederate army. Some of the strongest lawyers of the state were in the convention, but the presence of many younger members of the bar tended often to increase the parliamentary difficulties of the presiding officer. The convention remained in continuous session, with only one week's intermission, from May 21 to September 3, 1901.

The Virginia convention met at Richmond on June 12, 1901, in accordance with the provisions of the act of February 16, 1901, after the people on May 24, 1900, had voted in favor of the calling of a convention. There were 100 members, one from each electoral district of the state house of representatives. Politically, the convention divided into eighty-nine Democrats and eleven Republicans. It contained one former governor, one United States senator, one college president, two clergymen, two journalists, one physician, one superintendent of schools, one civil engineer, and at least forty-two lawyers.[2] The last class was not so strong here as in the Alabama convention, and, relatively, the business men and farmers were more numerous and possessed more influence than in Alabama. The convention continued in session, with many intermissions, from June 12, 1901, to June 26, 1902.

The primary purposes of these two conventions were almost

[1] I have not verified this last number, but it was twice mentioned in the convention proceedings, and there were surely over eighty lawyers, a majority of the convention. (*Advertiser*, June 25, 1901, p. 12; July 30, p. 9.)

[2] The statistics of occupations of all the members have not been available, and therefore the above figures must be taken as minima only.

identical. It was well recognized in both states that the existing practical disfranchisement of the Negro by means of intimidation and dishonest election methods must give place to a constitutional limitation upon Negro suffrage. But beyond this similarity the tasks of the two conventions were quite diverse. The Democrats of Alabama had seized control of their state government in 1875, and in a convention had changed many of the features of the reconstruction constitution of 1867, providing in the new document for many economies and arranging the machinery of government so that a return of the carpet-baggers to power would do the state little harm. This intermediate step between 1870 and 1900 had not been taken in Virginia, where the reconstruction constitution of 1870 remained in force until the new document went into operation on July 10, 1902. Thus the Virginia convention had to do the work performed in Alabama by two distinct conventions meeting a quarter of a century apart. It must not only disfranchise the Negroes, but must also remove all the obnoxious features of the Underwood constitution,[1] and frame an organic law adapted to the economic needs of the twentieth century.

In another way the work of the Virginia delegates was more difficult than that of the Alabama convention. Alabama, though characterized by greater internal economic diversity than Mississippi or Louisiana, was able, on the whole, to adjust without serious trouble the conflicting interests of her various sections. On the other hand, Virginia's social structure embraces the most varied industries, with strongly opposing economic interests. There are the eastern shore and the coasts of the Chesapeake, interested in fishing, the oyster industry and small farming; there is the "black belt," south of the James River, with its large plantations and over-abundance of Negroes; the large cities near the capes of the Chesapeake furnish another class; back at the base of the mountains, the Piedmont region holds a race of thrifty farmers; and farther to the west, among the mountains, there are mining, lumbering, and allied industries, with many poor laborers,

[1] So called from John C. Underwood, who presided over the convention of 1867–68, which was largely composed of carpet-baggers and Negroes. (Annual Cyclopedia, 1867, p. 763; 1868, p. 758.)

and, in the upland valleys, poor white farmers upon the sterile mountain lands. To frame or administer a government acceptably to all these varied interests has always been a difficult problem for the statesmen of Virginia. And particularly was it difficult, in the light of the fourteenth and fifteenth amendments to the national constitution, to frame a provision which would disfranchise the Negro, and yet leave open the suffrage to every white man.

These two facts — the necessity for far-reaching constitutional reform and the diversity of sectional interests — account largely for the extreme duration of the Virginia convention. There was another reason as well, however, which was purely a question of parliamentary procedure. In the Alabama convention the reports of committees were received by the convention and read three times, the discussion usually taking place upon the second reading. During the debate, the length of speeches was frequently limited to thirty minutes, sometimes to less, and the previous question could always be moved. In the Virginia convention, which followed the precedent set by earlier conventions of that state, all committee reports [1] were considered in committee of the whole, where speech-making was unlimited and the previous question could not be called for, and were afterward taken up in convention, where the whole discussion might be repeated. This procedure permitted great latitude in debate, which, indeed, may have been necessary owing to the wide diversity of interests; but it led to tiresome repetitions and prolonged the session to an abnormal extent.

Before considering in detail the more important innovations debated by the conventions, attention should be called in passing to the significant omissions by which the evidences of reconstruction influence were removed from the organic law of the two states. The constitutions of 1870 and 1875 respectively contained a number of sections whose sole effect and purpose was to

[1] An exception was made in the case of the suffrage report, which was discussed only before the convention. This report was debated before a conference of Democratic members from three to five times a week from October 8, 1901, to March 7, 1902, and was then considered in daily conferences of those members from March 8 to 28; and on March 31 it was taken up for consideration by the convention.

declare and emphasize the principles which were embodied in the Congressional policy of reconstruction. These sections disappeared in the new constitutions. In Virginia the convention dropped the declarations that the state would always remain a member of the American nation, that force ought to be used in preserving the Union, that the national constitution and laws were paramount, that slavery should not exist in the state, and that all citizens were entitled to equal civil and political rights;[1] in Alabama, the omissions included the clauses extending state citizenship to all persons born or naturalized in the United States, denying the principle of secession, and prohibiting the placing of educational or property qualifications upon suffrage or office-holding.[2] These provisions, four in the Virginia constitution of 1870, and three in the Alabama one of 1875, were the humble pie forced down the reluctant throats of the defeated Confederates. They have been incorporated in but few of the Northern constitutions,[3] and naturally the Southerner wished to be rid of the evidences of his humiliation.

II.

Looking first at that feature of the work of these conventions which attracted most public attention, we may examine the reasons for Negro disfranchisement as given by the delegates. The most fundamental argument was that drawn from the racial inferiority of the black man and his natural incapacity to perform political duties. This idea — or it might better be termed a feeling or instinct — found expression in words in both conventions, but it was seen, and well proved also, by the fact that not a Negro had been elected to either convention to protect the claims of his race. A few excerpts from the report of the debates will sufficiently illustrate this argument.

[1] Constitution of 1870, Art. I, sec. 2, 3, 19, 20.

[2] Constitution of 1875, Art. I, sec. 2, 35, 38. The denial of the right of secession was stricken out "as having no place in a declaration of rights." (Report of Committee, Montgomery *Advertiser*, June 22, 1901, p. 10.)

[3] See Nevada constitution of 1864, Art. I, sec. 2.

The disqualifying principle in the Negro race is not color, but character; and the qualifying principle in the white race is not color, but character and mental superiority. . . .

I am willing to treat the colored man, the Negro race, fairly, honestly and all right, and give him his rights; but I am one of those that believe he is incapable of self-government. I believe, sir, that the white race should rule. . . .

I believe, as truly as I believe that I am standing here, that God Almighty intended the Negro to be the servant of the white man. I believe that the Scripture will sustain my position on that question. I know he is inferior to the white man, and I believe that delegates of this convention believe him to be. He knows it himself. . . . I take the position that the exercise of the suffrage was an inherent right with the white man and a privilege with the Negro granted by the white man. . . .

It was said that universal suffrage can safely be given only to the white race; that not race prejudice but actual experience has shown that Negro suffrage leads to intolerable government and political corruption; that the Fifteenth Amendment was wrong in the theory that the races are equal, — a theory which has been disproved since the dawn of history. And one delegate, speaking in favor of requiring the voter to understand the duties of the officer for whom he was voting, said: "A Negro could read and write like a white man, but he could not, to save his life, comprehend or explain, like a white man, the simplest form of civil government." Or, to sum it all up, "the white race must dominate because it is the superior race, and in that domination the negro will find the safest pledge and guarantee of just and impartial administration."

Other speakers claimed that Negro disfranchisement was necessary in order to make permanent the supremacy of the whites. President Knox of the Alabama convention, in assuming the chair, said that the problem of the convention was, "within the limits imposed by the federal constitution, to establish white supremacy in this state." But this statement of the question was not accepted by a large portion of the delegates in both conventions, who held that white supremacy was in no danger, and had not been in danger since the whites had gained control by force or fraud back in the seventies. Said one:

In the confidence in our race we have not questioned that the white man would rule in Virginia whatever were the conditions of suffrage, and however few might be his numbers.[1]

And again:

There will never come a time in the history of this state when the Anglo-Saxon will again submit to the domination of the black man. No matter what it costs, no matter what the method, this one fact stands out supremely true, — that the Anglo-Saxon race is now and will be forever master wherever it exists.[2]

Admitting the inevitable domination of the Caucasian, the great majority of the two conventions demanded the exclusion of the Negro from political life, in order to raise the standard of state politics. For almost a quarter of a century the whites had controlled elections either by the purchase of Negro votes, by intimidation of the voters, or by refusing to count the Negro votes after they were cast. They were bound to dominate; peaceably and legally if possible, but otherwise by any necessary means, even unlawful and violent. The conventions were called, so it was said, to replace the old force-and-fraud methods by new legal and constitutional provisions for disfranchising the black man. It was again the old problem which our constitutional conventions from the first have faced, — that of giving permanent legal form to existing facts. But in this case the difficulty was immensely increased by the Constitution of the United States, which stood in the way of the direct accomplishment of the end in view. The expressions of this general argument for Negro disfranchisement were so frequent and varied in the two conventions that it is difficult to make a choice of extracts.

The white man must rule, said Senator Daniel, but "we want him to rule in the supremacy of decency and with the association of law and order which will command the respect not only of himself, but of the whole civilized world." [3] Under the Negro and carpet-bagger rule, said ex-Governor Oates of Alabama, the whites of the South were compelled either to leave their homes or to get control of the government. They chose the latter,

[1] Richmond *Dispatch*, April 2, 1902, p. 9.
[2] *Ibid.*, April 3, 1902.
[3] *Ibid.*, April 2, 1902, p. 9.

since there was no place to which they could emigrate. There were two possible methods of assuming control: one was by force and shotguns, the other was to cheat the blacks.

I was an advocate of the latter because it didn't take life. Now, I never changed votes with my one hand,[1] but I upheld it and counselled it in those who did. I am just as guilty as those who did. . . . Unfortunately, it was a necessity. We could not help ourselves. We had to do it or do worse. But we have gone on from bad to worse until it is a great evil. . . .[2]

Another speaker said: "We are tired of frauds; we are tired of ballot-box stuffing; we are tired of buying Negro votes: but the fraud will never cease until this vote [Negro] is eliminated." In the Virginia convention we find the frankest admissions that "the grossest frauds are committed;" that "the elections in what is known as the black belt are carried by fraud." One member pointed ironically to the fact that the "black belt" counties were the ones which furnished the greatest majorities in favor of the convention and of Negro disfranchisement.

In the Alabama convention the same arguments were heard:

But if we would have white supremacy, we must establish it by law — not by force or fraud. If you teach your boy that it is right to buy a vote, it is an easy step for him to learn to use money to bribe officials or trustees of any class. If you teach your boy that it is right to steal votes, it is an easy step for him to believe that it is right to steal whatever he may need or greatly desire.[3] . . .

We have told the people of Alabama for years that we wanted to disfranchise the Negro. He has been about the ballot box like sheep in the market, for sale and traffic to the highest bidder. The white people who love the ballot . . . want to exercise that great weapon in the defence of things that are right and sacred. We want to take it out of the hands of men whom you can purchase for twenty-five cents and a drink of whiskey. . . . We have pledged ourselves to the white people of Alabama, . . . and here is our registered vow to disfranchise every Negro in the state and not a single white man.[4] . . .

Can any man deny the fact that almost since the adoption of the

[1] The speaker had lost an arm in the Civil War.
[2] Montgomery *Advertiser*, July 25, 1901, p. 9.
[3] *Ibid.*, May 23, 1901, p. 1.
[4] *Ibid.*, July 26, 1901, p. 11.

Fifteenth Amendment the very immunity which it sought to secure has been annulled by the unanimous voice of the white people of Alabama? Now, that has been done by revolutionary methods, by force and fraud, and, as always happens when those methods are resorted to, other evils have been created. Fraud having become necessary, it has debauched the consciences of our people. It threatens the degeneracy of our descendants, and we feel that we cannot perpetuate our decree of annulment by those methods.[1]

And one more quotation from the Virginia convention is almost pathetic:

The problem is this, — to take this black man out of the suffrage of Virginia as a factor and remove him as a disturbing and demoralizing influence. We do not fear his numbers. We fear his presence. As long as he is in the suffrage with us in any numbers, our curse is still upon us, we will still be in the grasp of moral and intellectual servitude, — servitude to the idea that we cannot think, that we cannot act, with independence on any of the great public questions that confront the citizens of this country, — and he will still be a destroyer of the morality of our political standards, because there will always be a large faction among the white people of Virginia that will continue to justify anything that will keep the black man out and put the white man in political control. . . . I plead for a new emancipation, not now of the black man, but of the white man, whom the black man has enslaved in turn. I plead to you for an opportunity to assert our natural power and natural leadership among the states of this Union. . . .[2]

Turning from the reasons for disfranchisement to the methods for accomplishing it, one is confused by the number and variety of plans proposed. There were at least thirty distinct plans submitted to the Alabama convention and at least forty-nine in the Richmond body. Of these seventy-nine propositions, only one, so far as I am aware, openly expressed its purpose to disfranchise every "Negro, black man, or person of African descent,"[3]

[1] Montgomery *Advertiser*, July 26, 1901, p. 12.

[2] Mr. Thom's speech in Democratic conference, October 2, 3, 4, 1901, printed in Richmond *Dispatch*, April 2, 3, 1902.

[3] Montgomery *Advertiser*, May 31, p. 11. Introduced by Mr. Pettus: "That no Negro, black man, or person of African descent shall be allowed to vote in any federal, state, county or municipal election in the State of Alabama."

although other resolutions called for the repeal of the fifteenth amendment to the United States constitution.[1] The other resolutions recognized that amendment and aimed by indirect means to exclude the blacks, and let into the suffrage as many whites as possible. In each state, Democratic party conventions had solemnly proclaimed their intention to exclude no white man from the suffrage while disfranchising the blacks;[2] and between the Scylla of these pledges on the one hand, and the Charybdis of the Fourteenth and Fifteenth Amendments on the other, the members were forced to steer their suffrage clause.[3]

The possibility of achieving the desired end lay obviously in the existence of other differences between the two races than the forbidden ones of "race, color or previous condition of servitude." Social and economic distinctions, fortunately for the Southern restrictionists, followed closely along the racial lines, and in this way served as the basis for disfranchising clauses which should not conflict with the letter of the national constitution. Thus almost all of the plans proposed, as one qualification for voting, a long term of residence, naturally bearing more heavily upon the Negroes, whose occupations are relatively less permanent, and habits more shiftless than those of the whites.[4] Practically all the plans favored a poll-tax, although there were divergencies concerning the amount of the tax, and concerning the policy of making the tax cumulative. The lowest amount suggested was fifty cents, and from this the proposals ran up as high as four and five dollars. In many plans the tax was merely payable for the preceding year, but in others it was cumulative, sometimes for a stated term of years, and sometimes for all years

[1] Richmond *Times*, June 21, 1901, p. 1; Montgomery *Advertiser*, June 22, 1901, p. 10.

[2] Richmond *Dispatch*, September 17, 1901, p. 1; Montgomery *Advertiser*, July 24, 1901, p. 9.

[3] Montgomery *Advertiser*, July 24, 1901, p. 9.

[4] As finally adopted, the Virginia constitution required two years residence in the state, one year in the county, city, or town, and thirty days in the precinct (Art. II, sec. 18); and the Alabama clause was identical except that it omitted the city and town from the second term (Art. VIII, sec. 178).

after the adoption of the constitution.[1] Other plans, like that finally adopted in Virginia, exempted certain classes from the payment of the poll-tax.[2] The poll-tax, like the residence requirement, was designed to take advantage of the obvious economic weakness of the Negro, to whom the amount of a poll-tax was a large sum, and who would, moreover, often disfranchise himself by thoughtlessly omitting to pay his tax at the proper time.

Another suggestion was the property qualification, which was usually linked alternatively with the educational clause. The majority of the whites could register under either one or the other of these clauses, while many Negroes could come in under neither. The amount of property required depended somewhat on the form of the educational or "understanding" clause, and some projects sought by the understanding clause to bring in all the whites, and by the property prerequisite to keep out the blacks. The proposed amounts of property varied from $100 up to $500 (real estate), $1,000, and even $10,000; while there were various alternatives of real and personal estate, and in some cases it was provided that a man might vote if his wife, child or parent held a certain amount of taxable property.[3]

As mentioned above, property was never proposed as an absolute qualification, as had been the case in the early history of our states, but it was made alternative with some other requirement. Thus the proposed $10,000 was alternative with two

[1] As adopted, the Alabama constitution requires a poll-tax of $1.50, to be paid before February as a prerequisite to voting in the following November, and the poll-tax due for every year since 1901 must be paid; but the tax is not collectible by any legal process (Art. VIII, 178, 194).

The permanent provision of the Virginia constitution requires that the poll-tax of $1.50 a year be paid for each of the last three years, at least six months before the election, but veterans of the Civil War are exempted (Art. II sec. 20–22).

[2] Art. II, sec. 22.

[3] Montgomery *Advertiser*, May 29, 1901, p. 9, 11; May 4, 5, 8, 30; Richmond *Dispatch*, June 23, 27, July 3, 9, 17, 23, 24. The temporary plan of Virginia had as one alternative the payment of one dollar taxes a year upon property (Art. II, sec. 19); and another section permitted the legislature to place a property qualification of not more than $250 for electors in any county or municipal subdivision (Art. II, sec. 30) in local elections.

The permanent plan of Alabama had an alternative requiring the holding of forty acres of land or $300 in real or personal property by the elector or his wife Art. II, sec. 181, clause 2).

other provisions, — that the applicant for registration be foreign-born, or that he be related by consanguinity, not farther removed than the *twentieth degree*, to a voter in any of the states before January 1, 1867.[1] It will be seen at a glance that such a provision would admit practically all of the whites whether of foreign or native parentage, and exclude all the negroes who did not possess $10,000. Many other alternatives to the property qualification were proposed. There were various degrees of education, of understanding, of character, of ancestry, or of industry required. The most common educational requisite was that of reading and writing the state constitution in the English language; but some others were proposed, such as a knowledge of the geography of the state — its counties, rivers, and cities;[2] an understanding of the duties of state officers;[3] ability to interpret the state constitution; or — an ironical proposition by a Republican — ability to read intelligently the Declaration of Independence, the Bill of Rights, the Decalogue, and the Lord's Prayer.[4] The most interesting character provision was the one adopted in the Alabama temporary plan, which, as the only alternative to military service or veteran ancestry, admitted

> all persons who are of good character, and who understand the duties and obligations of citizenship under a republican form of government.[5]

The suggestions for an ancestry provision were as numerous and varied as those for a property qualification. The typical

[1] Montgomery *Advertiser*, June 8, 1901, p. 10.

[2] *Ibid.*, June 6, 1901, p. 11.

[3] Richmond *Dispatch*, September 27, 1901, p. 2.

[4] Richmond *Dispatch*, June 23, 1901, p. 15. The permanent provision of the Alabama constitution requires (1) ability to read the Constitution of the United States and the engaging in some lawful calling for the greater part of the preceding twelve months; *or* (2) the possession by the voter or his wife of forty acres of land or $300 taxable property (Art. VIII, sec. 181).

The temporary clause of the Virginia constitution requires ability to read and explain, or understand and explain, any section of the state constitution, if the person is not a veteran or the son of a veteran or a property-holder paying one dollar taxes a year. The permanent provision requires payment of poll-tax and ability to register in one's own handwriting his name, age, date, and place of birth, residence and occupation for the last two years (Art. II, sec. 19, 20).

[5] Art. VIII, sec. 180, clause 3.

plan proposed the exemption from the provisions of the property or educational clauses, of veterans of certain wars and their descendants. Thus veterans of the Civil War were exempted by one plan; by another the exemption was extended to veterans of all the wars since the Revolution and their descendants; another enfranchised veterans of any American or *European* war and their descendants; and still other plans limited the exemption of veterans' descendants to a term of years, or to a definite degree of relationship, or extended the exemption to those who had served, or whose ancestors had served, in the militia before a certain time.[1] Following the "grandfather clause" of the constitution of Louisiana, several proposals were made to free from educational or property restrictions those who had voted in any state before a certain date, or the descendants of such voters. The dates given, of course, were those at which negroes were not allowed to vote, and 1850, 1861, and 1867 were all suggested.

We may close this long list of methods proposed for limiting Negro suffrage by the mere mention of some miscellaneous plans, showing originality of conception, if not full practicability. One project provided for the use of special colored ballots by persons who could not fulfil the intelligence requirement, such ballots to count only one-fourth as much as the white ballots.[2] Again, it was proposed to admit to the suffrage a limited propertied class and then permit these to add others to the lists by a majority vote of the registered electors in each locality — a provision which strongly reminds one of the Connecticut custom in colonial days; or, again, to place the general requirements high, and permit the legislature to add others to the lists by name — again recalling New England precedent in the colony franchise in Massachusetts. A very ingenious plan, suggested by a prominent member

[1] The veteran-ancestry feature was incorporated into the temporary registration plan of each of the new constitutions. The Alabama plan provided that any person who had served in any war of the United States since 1812, or in the Confederate army or the army of Alabama, or whose ancestor had so served, was entitled to registration before December 20, 1902 (Art. VIII, sec. 180). The Virginia constitution gave the right of registration before January 1, 1904, to those who had served in the army or navy of the United States, of the Confederate States, or of any state or any of the Confederate States (Art. II, sec. 19).

[2] Montgomery *Advertiser*, June 6, 1901, p. 11.

of the Virginia committee on suffrage, would have divided the inhabitants into classes according to occupation, admitting to the suffrage those engaged in professional or skilled employments, and giving the legislature power to extend the privilege to certain classes of manual laborers.[1]

But one other feature of the suffrage plans need be mentioned. In each convention it was the evident purpose to obtain a plan of suffrage which would automatically exclude the Negroes and abolish all the old methods of fraud and force. But in neither was this altogether accomplished. The radical majority in both conventions reached the conclusion that their suffrage sieve would not be effective without some arbitrary administrative process. The promise to disfranchise not a single white voter made an impartial administration of any election law impossible, and required the granting of certain discretionary powers to the election officials. In each case, however, the matter was compromised by making this administrative partiality to the white voter a temporary affair, insuring the registration of all the whites who had voted under the old constitutions, and placing their names permanently upon the lists, providing that after a definite time the educational or property qualifications should be enforced, theoretically, upon whites and blacks without favor. The discretionary power in the Virginia constitution was found in that part of the temporary plan which required an applicant for registration who did not own property, or had not served in the army, or was not the son of a veteran, to be

> a person able to read any section of this constitution submitted to him by the officers of registration, and to give a reasonable explanation of the same; or, if unable to read such section, able to understand and give a reasonable explanation thereof when read to him by the officers.[2]

The Alabama provision was found in the good-character clause already quoted.[3] Under these two clauses it was evident that no impartial administration was contemplated. Little was said on

1 Richmond *Times*, July 17, 1901, p. 1, 2. The Alabama permanent provision required those who came under the terms of the educational clause to possess a regular lawful employment (Art. VIII, sec. 181).

2 Art. II, sec. 19.

3 See page 491.

the subject in the Alabama convention, but the Virginia members were not chary of expressing their opinions, and some even insisted upon the adoption of a permanent administrative feature. Said a member of the Alabama convention:

> This is a commission of three to serve at two dollars per day to pass upon a person's good character. Men who are willing to serve at two dollars a day are to determine the duties and obligations of citizenship under the republican form of government, and they are to be appointed by a central commission at Montgomery. It is an abomination. . . . I say that no commission should ever pass upon my right to vote. I say that the law, as written here, should determine whether I have a right to vote or not.[1]

A Virginian who favored a permanent administrative clause gave his opinion of its efficacy in excluding the blacks:

> We think that it will be efficient because we do not believe that the Negro can stand this examination. We think it is a vastly different question from his reading and writing. . . . But it would not be frank in me, Mr. Chairman, if I did not say that I do not expect an understanding clause to be administered with any degree of friendship by the white man to the suffrage of the black man. I expect the examination with which the black man will be confronted to be inspired by the same spirit that inspires every man upon this floor and in this convention. . . . The people of Virginia do not stand impartially between the suffrage of the white man and the suffrage of the black man. If they did, this convention would not be assembled upon this floor. . . . We do not come here prompted by an impartial purpose in reference to Negro suffrage. We come here to sweep the field of expedients for the purpose of ridding ourselves of it forever. . . . But again, I expect this clause to be efficient, because it will act *in terrorem* upon the Negro race. They believe that they will have a hostile examination put upon them by the white man, and they believe that that will be a preventive to their exercising the suffrage, and they will not apply for registration.[2]

And another, who opposed the method, said:

> If we cannot get rid of the Negro vote except by resorting to such methods as this, I say better, far better, let us keep the Negro vote. . . . We know perfectly well — and I do not care who hears me say it —

[1] Montgomery *Advertiser*, July 25, 1901, p. 11.

[2] Richmond *Dispatch*, April 3, 1902.

that if the Negro race did not exist this so-called understanding clause would never have been thought of. Now, what does that mean? I do not believe there is any man on this floor who himself would be willing to do dirty work for the purpose of keeping Negroes off the registration books. You gentlemen know what this means as well as I do. . . . We all know, in the depths of our hearts, whatever our motives may have been, that the reason we have put this understanding clause here at all is that we expect these registrars to favor the white man as against the Negro.[1]

Having now presented at some length the ideas that were operative in the two conventions, we may conclude this part of our study by a summary of the two suffrage clauses as finally adopted. The two constitutions agree in providing for distinct temporary and permanent plans, in requiring similar terms of residence and the same poll-tax rate ($1.50), and in prescribing elaborate methods of registration, with officials possessing under the temporary plans certain discretionary powers. The Alabama temporary plan gave the right to register before December 20, 1902, to those (1) who had honorably served in the land or naval forces of the United States in the War of 1812 or any subsequent war, or in the army of the Confederate States, or of Alabama during the war between the states; or (2) who were lawful descendants of the above class; or (3) who were persons of good character and understood the duties and obligations of citizenship under a republican form of government. The Virginia temporary plan authorized the registration, before January 1, 1904, of every one (1) who had served in the army and navy of the United States, of the Confederate States, or of any state of the United States or Confederate States; or (2) who was the son of any person in the above class; or (3) who had paid state taxes of one dollar on assessed property; or (4) who was able to read and explain, or understand and explain, any section of the state constitution. In both states the persons registered under these temporary plans acquired the right to vote for life, unless they were afterwards convicted of certain crimes. The Alabama permanent provision admits to registration after January 1, 1903, any one who has

[1] Richmond *Dispatch*, April 3, 1901, p. 12.

paid all poll-taxes due since 1901, provided that he either (1) can read and write any article of the national constitution in the English language and has been regularly engaged in a lawful occupation for a year preceding his application to register; or (2) owns, or his wife owns, forty acres of land or $300 worth of property. The Virginia permanent plan requires the applicant after January 1, 1904, to have paid the poll-taxes, if due, for the three preceding years, and to be able to fill in all the details of his application blank in his own handwriting without assistance or memorandum.

By these elaborate provisions the existing white electorate was retained in each state, a very large proportion of the Negroes were excluded, and permanent features were adopted which, even with impartial administration, would lead to practical Negro disfranchisement. The very intricacy of the method would be its greatest deterring influence. The blacks

> will know that they first have to pass an examination; that then they have to make out their application for registration in their own handwriting; that they have to make out their ballot without assistance; and that they have to pay a capitation tax. These impediments will be too great for the Negro, and he will find himself, as a practical question, excluded from the suffrage.[1]

These are the words of one who helped to frame the Virginia article on suffrage.

III.

Turning now from the subject of the suffrage, we may notice the other elements of the new constitutions, and first of these, the organization of the three departments of government. Here there were no radical changes. The most marked feature was the same distrust of the state legislatures which has shown itself in all recent constitutions.[2] The fear of over-legislation was

[1] Richmond *Dispatch*, April 3, 1902.

[2] A remarkable exception to this feeling was the proposed constitution of Connecticut, rejected by the people at the polls on June 16, 1902. The convention making this document was opposed to the insertion of legislative and administrative restrictions, and the constitution was the shortest made in this country in many years. See Hartford newspapers, January 1 to July 1, 1902; entire constitution in Hartford *Times*, April 30, 1902.

shown in the restriction of the legislature in Alabama to quadrennial instead of biennial, and in Virginia to biennial instead of annual sessions.[1] The same feeling was shown in the limitations upon local and special legislation, which had scarcely been restricted at all in the old constitutions.[2] The named subjects upon which special legislation is forbidden number thirty-one in the Alabama and twenty in the Virginia constitution; and in addition to these, there are elaborate provisions for the publication of local and special laws, and, in Virginia, for a special joint committee to consider such proposed legislation previous to reference to any other standing committee.[3] The requirements in respect to the consideration and passage of bills were expanded somewhat from the Alabama constitution of 1875, and in Virginia entirely new sections were introduced,[4] as the reconstruction constitution of 1870 had no restrictions on this point. In Alabama an interesting innovation required the governor, auditor, and attorney-general to prepare and have printed a general revenue bill before the session of the legislature.[5] Other new features in Virginia were the provision that no law, except a general appropriation law, should go into effect until ninety days after the adjournment of the legislature;[6] that the assembly should make no appropriations to sectarian organizations;[7] and that there should be a joint standing audit committee to examine annually or oftener the books of the state's financial officials.[8]

Comparatively few changes were made in the executive departments of the two states. In Alabama a lieutenant-governor

[1] Alabama constitution, Art. IV, sec. 46, 48; Virginia constitution, Art. IV, sec. 42, 46. Quadrennial elections and sessions of the legislature won also for a time in the Virginia convention (Richmond *Dispatch*, September 27, 1901), but upon reconsideration the term was cut down to two years. (*Dispatch*, January 17, 1902).

[2] Alabama constitution of 1875, Art. IV, sec. 23, 24; Virginia constitution of 1870, Art. V, sec. 20.

[3] Alabama constitution, Art. IV, sec. 104–111; Virginia constitution, Art. IV, sec. 62–66.

[4] Art. IV, sec. 50–53.

[5] *Ibid.*, sec. 70.

[6] With certain emergency exceptions by vote of four-fifths of each house. Art. IV, sec. 53.

[7] Art. IV, sec. 67.

[8] *Ibid.*, sec. 68.

was provided for, and the commissioner of agriculture had the word "industries" added to his title, with presumably a corresponding extension of his duties. The terms of all elective officers were extended from two to four years to agree with the new election provision; the attorney-general, secretary of state, and state auditor were to constitute a board of pardons advisory to the governor; elaborate provisions were made for the gubernatorial succession, and the governor was forbidden to take any other office in the state or a seat in the United States Senate for one year after the expiration of his term as governor.[1] Sheriffs were disqualified for holding office more than one term, and were made subject to impeachment if prisoners were taken from their custody and lynched.[2] In Virginia the governor was authorized to suspend from office, during a recess of the legislature, any executive officer neglecting his duty,[3] to require information *on oath* from officials, and even to appoint expert accountants to examine their books.[4] Several executive officers were made elective by the people instead of by the assembly; minor changes were made in the method of passing bills over the veto of the governor; and the legislature was directed to provide by law for an "efficient system of checks and balances" among the officers intrusted with the receipt and care of public revenues.[5]

In the judicial department the most important change was the abolition, in Virginia, in the interest of economy, of the county court system, and the picturesque and popular "co'te-day." For this interesting relic of colonial times there was substituted a commonplace grouping of the counties into twenty-four numbered circuits, each circuit court having one judge elected by the legislature for eight years.[6] The old historic title of "hustings court" in the cities also gave place to the term "corporation court," and, in pursuance of its tendency to economies, the convention of Virginia permitted the abolition of corporation courts

[1] Art. V. [2] *Ibid.*, sec. 138. [3] Art. V, sec. 73. [4] *Ibid.*, sec. 75. [5] *Ibid.*, sec. 84.

[6] Art. VI, sec. 94–97. The committee report on judiciary was made November 21, 1901, and discussed November 29 to December 18, 1901 and January 6–9 1902. A strong effort to have the judges elected by the people failed. See Richmond *Dispatch* of above dates for debates.

in the smaller cities and towns.[1] Minimum salaries were set for judges, and it was provided in the bill of rights that jury trials in minor criminal cases might be dispensed with if the accused persons agreed, and juries of less than twelve and more than five might be established by law for minor civil and criminal cases.[2] In Alabama the changes were chiefly verbal and administrative rather than organic. An attempt to have the judges appointed by the legislature instead of by popular election failed;[3] county solicitors, instead of getting their offices from the legislature, were made eligible by popular vote, and their term was changed from six to four years.

IV.

The two conventions under consideration have been the first to meet since the recent excessive growth of industrial trusts and railroad combinations, and naturally the subject claimed a large share of the attention of the delegates. Upon this subject the Virginia constitution has the more comprehensive provisions,[4] which make up one-fourth of the length of the whole document.[5] A long section[6] first defines the various terms used in the article, and then the usual provision is made that corporation charters shall be granted or amended only in accordance with general laws. Section 155 erects a permanent "State Corporation Commission," composed of three persons appointed by the governor with the consent of the assembly, for a term of six years, and receiving a salary of at least four thousand dollars; but after the year 1908 the legislature may provide for the election of the commissioners by the qualified voters of the state. The duties

[1] Art. VI, sec. 98. The demand for the reform of the costly court system was a strong reason for the calling of the convention, as President Goode said in his opening speech. (Richmond *Times*, June 13, p. 3.) On the second day of the convention Governor Tyler, in addressing the members, said: "We have become an office-ridden people." (Richmond *Dispatch*, June 14, p. 7.)

[2] No change was made in the method of appointing judges by the legislature, a feature common to all Virginia constitutions except that of 1850.

[3] Montgomery *Advertiser*, August 6, 1901, p. 1, 9.

[4] The committee report was made January 24, 1902, and considered February 4–20, 1902.

[5] Arts. XII and XIII.

[6] Section 153.

of the commission are to issue all charters and amendments of charters to domestic corporations, and all licenses to foreign corporations; to supervise, regulate, and control all transportation and transmission companies, and for that purpose to prescribe reasonable and just rates, charges, classifications, and regulations; to examine the books of such companies and require reports from them; and to investigate the physical condition of the roads, their schedules, connections with other roads, *etc.* The authority of the commission in prescribing rates is paramount even to the legislature, but appeals may be taken to the Supreme Court of Appeals; and the commission has the authority of a court of record in enforcing its process and securing evidence. Other sections pertain to licensing foreign corporations, restraining the right of eminent domain, forbidding greater charges for short than for long hauls, prohibiting the grant of passes or free transportation to public officials, limiting the iniquitous doctrine of fellow-servant, encouraging parallel lines of railroads, and prescribing the careful exposition of financial plans before stock or bonds can be issued by a corporation. In addition to the ordinary taxation of the real and personal property of corporations, a franchise tax of one per cent is laid upon the gross receipts of transportation companies. Another section directs the legislature to pass laws preventing trusts, combinations, and monopolies inimical to the public welfare. No more comprehensive articles than these have been placed in any of our state constitutions.

In Alabama [1] the action upon corporations was much more conservative. A strong popular sentiment in favor of an elective railroad commission was seen in the frequent petitions which came into the convention.[2] That body, however, refused to make any constitutional provision for a commission, and left with the legislature the power to regulate railroad tariffs, correct abuses, and prevent discrimination. Other features of the article on corporations forbade the use of the streets of any municipality without the consent of the local authorities, required corporate powers

[1] The corporation committee reported July 26, and the subject was considered August 17-20, 1901.

[2] Montgomery *Advertiser*, June 27, July 22, 23, 1901.

to be granted by general laws, directed the legislature to levy franchise taxes upon the capital stock of corporations, declared fictitious issues of stock void, and forbade the giving of railroad passes to officials and rebates to individuals.[1]

V.

The development of manufacturing industries and the shifting of population to the towns led both conventions to adopt numerous provisions for the control of municipalities. That the Alabama constitution of 1875 contained but a single short section upon the subject of municipalities[2] is not surprising in view of the fact that only 4.6 per cent of the population in 1880 dwelt in places of 4,000 or over. By 1890, 8.2 per cent dwelt in places having 4,000 population or over, and by the last census 10 per cent dwelt in such cities.[3] In Virginia, too, there has been an increase, somewhat less marked, of the urban population from 11 per cent in 1880 to 15 per cent in 1890, and 16.5 per cent in 1900. Between 1880 and 1900, three cities in Alabama increased in population from 48,931 to 107,230, and two in Virginia grew from 85,566 to 131,674.[4] Although these figures exhibit an urban development that is but slight as compared with what is seen in some Northern and Western states, yet the conditions called for some constitutional restraint upon the eager and hasty action of growing municipalities.

The Alabama constitution places municipalities in a subdivision of the general article on corporations, while the Virginia document, following that of 1870, devotes a separate article to the organization and government of cities and towns. In Alabama, the convention, which usually followed closely the reports of its committees, rejected a large part of the reported plan upon municipalities.[5] It refused to compel the legislature to classify cities, refused to grant local option and popular vote in the formation and adoption of municipal charters, and changed the proposed

[1] Art. XII, sec. 227-246.

[2] Art. X, sec. 7.

[3] Bulletin of Twelfth Census, No. 70, p. 4.

[4] *Ibid.*, p. 12, 13.

[5] The committee reported June 6 and 24, 1901. See *Annals of the American Academy*, Vol. XIX, p. 143-145.

duration of public franchises from twenty to thirty years. In Virginia, the committee report was followed more closely.[1] There a city was defined as an incorporated place having a population of 5,000 or over, other incorporated places being called towns; while in Alabama the phrase "cities, towns, or other municipal corporations" is not defined, although many of the provisions are limited to places having over 5,000 population. Both constitutions provide for general laws relating to cities,[2] but Virginia goes farther and outlines an elaborate plan of municipal organization, descending into the sphere of ordinary legislation. It names the municipal officers, — mayor, treasurer, sergeant, judge, clerk of court, commissioner of revenue, and members of the two branches of city councils, — specifies their terms of office (usually four years), and in some cases states their duties.

In each state the important questions of municipal policy are settled by the provisions that no franchise for the use of streets can be given except with the consent of the local authorities, and that such franchises shall be limited to thirty years;[3] in Virginia, moreover, there must be a public advertisement for competing bids. In Virginia, also, no sale of public places, such as docks, wharves, streets, parks, or bridges, or of gas, water, or electric works, can be made without the affirmative vote of three-fourths of all the members elected to the municipal councils.

Up to very recent years the principal municipal subject with which constitution-makers concerned themselves was that of taxation and indebtedness. The two Southern conventions did not neglect the subject. Virginia places no general limit on municipal taxation, but she restricts the local school tax levied by any school district to five mills on the dollar,[4] although the assembly may authorize a local poll-tax for educational or other local purposes not exceeding one dollar in addition to the state poll-tax

[1] The report was presented January 10, 1902, and considered January 20–29. (Richmond *Times*, January 12, p. 6).

[2] In Virginia certain special legislation is permitted by a vote of two-thirds of each house of the legislature (sec. 117).

[3] "Except railroads other than street railroads" (Alabama); "except for a trunk railway" (Virginia).

[4] Art. IX, sec. 135.

of a dollar and a half.[1] In Alabama the general limit to municipal taxation is one-half of one per cent of the valuation of property as fixed by the last state assessment;[2] but this is subject to so many exceptions as to be almost nugatory. Montgomery, Mobile, and sixteen other designated cities and towns may exceed the limit for certain purposes and in certain proportions.[3] This is almost worse than no restriction, since it gives the present cities and towns an advantage over any which may subsequently spring up. The lawful indebtedness of cities and towns is limited in Virginia to eighteen per cent of the assessed valuation of "real estate," and in Alabama to five per cent of the "property," for cities under 6,000 population, and to seven per cent for those above that size; but in both states there are exceptions to the restriction.[4] Both except from the total debt notes issued in anticipation of revenue; and Virginia reasonably enough excepts bonds for those public improvements from which the income is sufficient to pay the interest and a proportionate amount of the principal of the investment.[5] In Alabama there is again a jumble of special provisions for particular localities. The seven-per-cent limit is extended to four towns whose population in 1900 varied from 2,100 to 4,437;[6] the limit does not apply to bonds issued for schoolhouses, waterworks, or sewers; and two cities are exempted from all the provisions.[7] Such features show the convention in the light of passing the special legislation which it forbade the legislature to enact. On the other hand the Virginia article embodies some of the soundest modern ideas upon municipal government.

[1] Art. XIII, sec. 173.

[2] Art. XI, sec. 216.

[3] *Ibid.* A tax of one per cent may be levied to pay debts contracted before December 6, 1875; Mobile may levy a tax of three-quarters of one per cent, Montgomery a tax of one and one-quarter; and Birmingham, Huntsville, Bessemer; Andalusia, Troy, Attalla, Gadsden, Woodlawn, Brewton, Pratt City, Ensley, Wylam, Avondale, Decatur, New Decatur, and Cullman may exceed the limit in fixed amounts for specified purposes.

[4] The great disparity in the debt limit in the two states must be due to different methods of assessing property.

[5] Art. VIII, sec. 127.

[6] Art. XII, sec. 225.

[7] Sheffield and Tuscombia.

VI.

Considerable attention was given in both conventions to the general subject of taxation, particularly to the questions of taxing corporations upon their franchises and of limiting the amount of state taxation.[1] In Alabama the limit of state taxation was placed at sixty-five one-hundredths of one per cent on the assessed valuation of all property;[2] in Virginia, where the current rate had been four-tenths of one per cent, the limit was placed at two-tenths of one per cent for general state purposes, one-tenth for school purposes, and a possible five one-hundredths for pensions, making the extreme limit thirty-five one-hundredths of one per cent; but after 1907, the legislature was empowered to fix a different rate.[3] Alabama did not provide for a franchise tax on corporations, but empowered the legislature to levy such a tax; while Virginia adopted an elaborate system of taxing transportation companies.[4] According to this plan, each railroad or canal company in the state must pay the legal rate of taxation upon its property and also a franchise tax of one per cent of the gross transportation receipts from traffic within the state. The property and franchise taxes are to be based upon annual reports made by the companies to the state corporation commission. This method of taxation may be modified in any way by the legislature after the year 1913. The Virginia legislature is further empowered to levy income and license taxes, but incomes under six hundred dollars are exempted from taxation;[5] and the Alabama legislature is expressly authorized to impose a collateral inheritance tax not exceeding two and one-half per cent.[6]

Before the meeting of the conventions and during their sessions, there was evidence of a public feeling in favor of a change from

In Alabama the committee report on taxation was presented June 14, and considered June 24 to July 5, 1901; the Virginia report was made January 30, and discussed February 21–26, March 4–7, 1902. The debates in Virginia were particularly interesting.

[2] Art. XI, sec. 214.

[3] Art. XIII, sec. 189.

[4] *Ibid.*, sec. 176–181.

[5] *Ibid.*, sec. 170.

[6] Art. XI, sec. 219.

the existing method of dividing the school fund between the two races.[1] This method provided for the apportionment of the fund according to the relative numbers of the school population of the two races. The new plan, which had some popular support, proposed dividing the school income between the two races in proportion to the amount of school taxes paid by each race, — a method which would have greatly decreased appropriations to colored schools. In neither state, however, did a majority of the committee on education favor division of the school funds according to tax payment.[2] A minority report in Alabama provided for the division of the state into white school districts and colored school districts without regard to the limits of one another, and gave to the respective white or colored voters in each district the power to determine the amount of taxation upon their own race for their own schools.[3] The report was not adopted, and the completed constitution provides apparently for an impartial division of the school income.[4] In Virginia the committee report granted some concessions to the black-belt representatives; the permanent school income from the "literary fund" and state taxation was to be apportioned according to the school population irrespective of race, but the income from local taxation for school purposes might be expended by the local authorities "in establishing and maintaining such schools as in their judgment the public welfare may require." [5] This left the distribution of

[1] See a cool, dispassionate argument favoring the absolute disfranchisement of the Negro and the withholding from him of educational rights, in order to prevent his economic competition with the white race, by R. H. Dabney, in Richmond *Times*, October 6, 1901, p. 18; and adverse editorial comment, October 10, p. 4. On the general discussion see also Richmond *Times* and Richmond *Dispatch*, June 26, 27, and July 24, 25, 1901; Montgomery *Advertiser*, June 2, 5, 6, 18, 1901.

[2] The Alabama committee reported July 12, and their report was considered August 14–16, 1901; the Virginia committee reported November 13, 1901, and the subject was considered November 15–25, December 18–20, 1901, January 4, 8–10, 16, 24–27, 1902.

[3] Montgomery *Advertiser*, August 16, 1901, p. 10 *et seq.* A spirited debate took place over the question, but the minority report was defeated by a vote of 90 to 31.

[4] Art. XIV, sec. 256, 269.

[5] See report in Richmond *Dispatch*, November 14, 1901; and the debate in *Dispatch*, November 23. Constitution, Art. IX, sec. 136.

their local taxes to be determined by the white officers of the district, and naturally meant the extension and strengthening of the white school system.[1] The provision was inserted in the constitution.

Beyond the settlement of this important question, there were some minor changes in the school systems of the two states. Alabama gave counties the right to levy taxes for school purposes, and, taking from the governor the right to nominate trustees of the state university, gave that power to the trustees themselves, who could nominate for vacancies in their own number, subject to approval or new election by the legislature. In Virginia there were several changes in the direction of democratizing the school administration. The state superintendent, hitherto appointed by joint ballot of the assembly, is to be elected by the voters for four years; the state board of education, in addition to its former members (the governor, state superintendent, and attorney-general), gains five experienced educators, — three selected by the senate from a list of eligibles nominated from the faculties of six designated institutions by the trustees of those institutions, and two local superintendents chosen by the other members of the board.[2] The legislature is permitted to establish compulsory education between the ages of eight and twelve years,[3] but is prohibited from making appropriations to any educational institutions except those owned exclusively by the state.[4]

VII.

Both of the conventions took action on the question of the powers of a constitutional convention, and its relation to the former constitution or to the laws providing for its assembling. On the first day of the Richmond convention, a warm debate was precipitated by the proposition to ignore the oath of office

[1] So thought a representative of the "black belt." (Richmond *Dispatch*, November 23, 1901, p. 8).

[2] Art. IX, sec. 130.

[3] *Ibid.*, sec. 138.

[4] *Ibid.*, sec. 141. William and Mary College was specially excepted from this restriction.

as laid down in the former constitution.[1] The objectionable section required not only an oath to support the United States and the state constitutions, but also bound the officer to accept and recognize the "civil and political equality of all men before the law." As the convention was called to change the old constitution, it was urged that the members could not swear to observe it; and as they were about to limit the suffrage to whites, they could not morally take a pledge to recognize the political equality of all men.[2] The question came as a surprise to the members and led to a somewhat bitter discussion, the convention at last, by a vote of 56 to 38, refusing to take the oath to the Underwood constitution.[3] The Montgomery delegates did not have the same difficulty, for a special oath was prescribed in the act calling the convention, and no objection was made to it.[4]

A second question of conventional power arose over the proposition to promulgate the constitutions instead of submitting them to a vote of the people, the latter being required by the enabling act in each state. Early in the Alabama convention the suggestion was voted down, and the convention pledged itself to submit its work to the ratification of the people.[5] At Richmond, also, the question was early taken up, having arisen over the phraseology of the preamble, the first subject to be definitely discussed; but its settlement here was not so speedy. The consciences of the members were burdened not only by the general custom in earlier Virginia conventions and by the solemn promises of the last Democratic state convention, but also by

[1] The oath is as follows: "I, ———, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the constitution and laws of the State of Virginia; that I recognize and accept the civil and political equality of all men before the law; and that I will faithfully perform the duty of ——— to the best of my ability: So help me God." Constitution of 1870, Art. III, sec. 6.

[2] Many outside newspapers confused the subject, and thought the convention refused to swear to observe the United States Constitution because they were about to break its amendments. See Richmond papers during June for editorials and extracts.

[3] Richmond *Times* and *Dispatch*, June 13, 1901; an attempt, on June 21, to reconsider the action was defeated on the 28th after a long debate.

[4] Act of Dec. 11, 1900, sec. 12.

[5] Montgomery *Advertiser*, May 25, 1901, p. 10. See Act of December 11, 1900, sec. 22–26.

the precise terms of the act of the legislature calling the convention.[1] The debate on the question began on July 29, and continued from that time till August 3, and, after an adjournment, from August 23 to September 5, when the matter was postponed until the constitution had been completed. Five or six hours of debate daily for eighteen days had not settled the question. The arguments favoring submission to the existing or the abridged electorate were drawn mainly from the history and theory of conventions; the practice of earlier Virginia conventions was cited, Jameson on *The Constitutional Convention* and Wood's *Appeal in Pennsylvania* were quoted to show that a convention could not overrule the legislative act calling the body; and fervent appeals were made to the members to respect the party promises. Those favoring proclamation reasoned from expediency and from the sovereign character of a constitutional convention; the promises of a party caucus could not bind the members of a solemn constitutional convention, nor could the legislature, the creature of a former constitution, bind a convention which was drafting a new document. It was feared that the officeholders who would lose their positions under the rigorous economy of the new constitution, would join with the railroad corporations, who also were opposed to the new frame of government, and with the money of the latter defeat the constitution in a popular election. Men from the mountains argued that some of the poorer whites, fearing disfranchisement, might also join with the corporations.[2]

After the postponement of the subject in September, 1901, there was little apparent popular interest until about January, 1902; but a possible solution had already been suggested in the proposal to allow the Democratic primaries of the state to determine whether the constitution should be submitted or proclaimed.[3] By February, 1902, both the Richmond *Times* and the *Dispatch*

[1] Act of February 16, 1901, sec. 12–17.

[2] For the whole debate on this subject, perhaps the most interesting which has ever taken place in any of our conventions, see the Richmond *Times* and *Dispatch* (particularly) for July 30 to September 6, 1901, and May 24 to May 31, 1902.

[3] Mr. Walton Moore was the reputed author of the suggestion. (Richmond *Dispatch*, August 27, 1901, p. 1, 3).

thought that submission was assured,[1] but a speedy change took place, and the latter paper, although favoring submission, believed, by March 28, that proclamation would win. On April 4, the convention took a long recess until May 22, ostensibly to give the committee on final revision an opportunity to complete its work, but also, no doubt, in order that the members might, through Democratic mass-meetings, learn the sentiments of their constituents.[2] Not formal primaries, as first proposed, but informal mass-meetings of Democrats, were accordingly held in the various counties and cities, and a large majority of these meetings instructed their delegates in the convention to vote for proclamation.[3] Thus the promise of the regular Democratic party state convention was annulled and the members were freed from the moral restraint of that pledge. The law of the legislature was more easily set aside, in the opinion of the majority of the convention, than the party pledge; and some of those who to the last favored submission, on the grounds of the pledge, admitted the right of the convention to act independently of the enabling acts of the legislature.[4] On May 29, the forces for proclamation won by a vote of 48 to 38, and the constitution was accordingly promulgated by the convention.

Although the Alabama convention early agreed to submit its constitution to popular vote, yet it, too, was brought face to face with the restraint of the enabling act of the state legislature. The act had declared that the members of the convention should draw pay for only fifty actual working-days.[5] The fiftieth day would arrive on July 20, and the work of the convention was scarcely half completed. Would the members respect the law and work on without compensation, or would they ignore the legislature and settle their own pay? There was little debate on the subject, and the convention on July 19 decided that it

[1] *Times*, January 31, 1902, p. 6; *Dispatch*, February 15, p. 1.

[2] Richmond *Dispatch*, April 5, 1902, p. 4.

[3] The details of this remarkable canvass of the state will be found in the news columns of the Richmond papers from April 5 to May 24, 1902.

[4] Senator Daniel, in speech on May 23, 1902.

[5] "The per-diem compensation shall not be allowed or paid to any member of the convention for a longer time than fifty days." Act of December 11, 1900, sec. 9.

would remain in session until its work was completed, and that the members should draw pay at the rate authorized by the legislature for the fifty days.[1] The enabling act in Alabama had also a number of provisions which the convention was required to insert in the new document, "if such convention be called." [2] These dealt with the basis of representation, the taxing power of counties and cities, equality of taxation, and forbade the incorporation into the constitution of any clause looking toward a change of the state capital or a modification of the exemption laws of the state. In all these cases the convention followed, in the main, the terms of the act, although it deviated somewhat from the instructions concerning local taxation, particularly exempting many cities and towns from the restrictions which the legislative act enjoined it to adopt. The changes here were not radical, but in continuing their own pay the convention went directly contrary to the intention of the legislature. The question was a minor one, yet it involved the same principle as that in the Virginia convention, and it was settled, as at Richmond, in favor of the convention's power. The Alabama delegates evidently determined that the question should not trouble future conventions; for they inserted a clause in the constitution guaranteeing the power and jurisdiction of constitutional conventions to perform such things as might seem to them necessary and proper to the amending and revising of the constitution.[3] Thus the Alabama convention in one case, and the Virginia body in two distinct instances, asserted their superiority to the existing laws and government.[4]

We have now noticed the principal innovations of the two new constitutions in detail. They may be summarized as follows:

[1] By a vote of 108 to 13. (Montgomery *Advertiser*, July 20, 1901, p. 10).

[2] See sections 15 to 21½ of the act of December 11, 1900.

[3] Art. XVIII, sec. 286.

[4] The Southern conventions have often assumed greater powers than similar bodies in the North, particularly in promulgating constitutions. It is interesting to note that the Connecticut convention, in session at the same time as the Virginia body, did not listen to a hint of proclamation, although the danger of defeat seemed greater in that state than in Virginia, — a foreboding which came true in the election of June 16, 1902.

(1) the legal disfranchisement of the Negro; (2) many new limitations upon the power of the legislature, particularly the requirement of infrequent sessions; (3) in Virginia, and slightly in Alabama, a tendency to extend the principle of popular election to formerly appointive offices; (4) restrictions upon the financial powers of municipalities; (5) more rigid supervision and control of private corporations, especially transportation and transmission companies; (6) a general increase in the number of provisions touching economic matters; (7) the expunging of the reconstruction phraseology; (8) a strengthening of the power of constitutional conventions.

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